IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Appeal from Order No. 137 of 2003

National Insurance Company Ltd. through its
Divisional Manager, Divisional Office 5/222
Canal Road, Tikonia
Haldwani, District Nainital ... Appellant

Vs

1. Smt. Kiran Mehra W/o Late Sri Darban Singh
2. Sri Rajendra Singh S/o Sri Prem Singh
   Both R/o Village Rontli Mehra
   Patti Kshetra
   Karnakarayat
   Tehsil & District Champawat
3. Sri Manoj Singh S/o Sri Soban Singh
   owner of Jeep No. UP03 2264
   R/o Village Rontli Mehra
   Patti Kshetra Karnakarayat
   Tehsil & District Champawat ... Respondents

Sri Pradeep Haria holding brief of Sri Manoj Tiwari, learned counsel for the appellant
Sri Yogesh Kumar Pandey, learned counsel for the respondents

Hon'ble B.C. Kandpal, J.

This appeal has been preferred under Section 30 of the Workmen Compensation Act, against the judgment and award dated 24.04.2003 passed by the Commissioner Workmen Compensation, Champawat in Workmen Compensation Case No. 3 of 2002 between Smt. Kiran Mehra & another Vs Sri Manoj Singh & another.

2. Brief facts, giving rise to the present appeal, are that Darban Singh was working as a helper in the Jeep bearing registration No. UP03 2264. On 07.10.2001 during night hours when the jeep reached near Jolari, the vehicle in question met with an accident, resulting which Darban Singh died on the spot. At the time of the accident the deceased was aged about 22 years and earning Rs. 1,500/- per month. The

deceased left behind her widow – Smt. Kiran Mehra and his father – Rajendra Singh. The claimant filed claim petition before the court concerned with an amount of Rs. 2,49,041/- as compensation.

3. The notices were issued to the owner as well as Insurance Company. Sri Manoj Singh contested the claim petition and filed his written statement stating therein that at the time of the accident the vehicle in question was insured with National Insurance Company therefore, he is not liable to pay any compensation. On the other side the owner of the jeep admitted this fact that at the time of the accident the deceased was working as a helper but as the accident occurred due to technical fault therefore, the liability of compensation is on insurer and he is not liable to pay any compensation.

4. The insurer – National Insurance Company also filed its separate written statement alleging therein that the claimants have not filed any evidence in support of their case and in the absence of evidence, the Insurance Company prayed for dismissal of the petition. It has further been pleaded that at the time of the accident the vehicle in question did not follow the terms of policy issued by the Insurance Company.

5. On the basis of the pleadings of the parties the court below framed relevant issues. The Commissioner, Workmen Compensation, Champawat after having perused the entire material available on record and hearing learned counsel for the parties award an amount of Rs. 1,66,027.50 in favour of the claimants to be paid by the National Insurance Company Ltd.

6. Heard Sri Pradeep Haria holding brief of Sri Manoj Tiwari, learned counsel for the appellant, Sri Yogesh Kumar Pandey, learned counsel for the respondents and perused the record.

7. In order to support its case, the claimants produced Smt. Kiran Mehra (P.W.1) and Sri Pushkar Singh (P.W.2) but the owner and the Insurance Company did not produce any witness in support of their case.

8. Smt. Kiran Mehra (P.W.1) has deposed in her statement that at the time of the accident, her husband was working as helper in Jeep No. UP03 2364 and earning Rs. 1,500/- per month. She has further stated that when the accident occurred on 07.10.2001, the deceased was discharging his duties and as soon as the said vehicle reached near Jolari, the same met with an accident.

9. Sri Pushkar Singh (P.W.2) has stated in his statement that at the time of the accident he was standing at Jolari near one shop. According to him, he was standing at the place of accident. He has further deposed that the jeep which was being driven by the driver – Dhan Singh met with accident near the bend. The driver of the vehicle in question fell down from the jeep and the cleaner did not escape himself and sustained injuries resulting his death at the spot.

8. Learned counsel for the owner has vehemently argued that at the time of the accident the jeep in question was insured with National Insurance Company and in support of his case he has produced entire material available with him.

He has further alleged that the liability of compensation is on Insurance Company.

9. The court below has discussed the entire factual aspect of the matter in detail and came to the conclusion that the deceased was discharging his duty at the time of the accident. Further, the owner of the jeep in question has produced the entire material which indicate that the jeep in question was insured with National Insurance Company Ltd. and according to the policy rule, the court below has rightly held that the Insurance Company is liable to pay the compensation to the claimants.

10. I do not find any infirmity in the impugned judgment and award dated 24.04.2003 whereby a sum of Rs. 1,66,027.50 as compensation to the claimants has been awarded by the Commissioner, Workmen Compensation Champawat.

11. In view of the above, the appeal lacks merit and is liable to be dismissed.

12. Accordingly, the appeal is dismissed. The stay order, if any, stands vacated. No order as to costs.

(B.C. Kandpal, J.)

05.12.2006
ASWAL